SHERIFF APPEAL COURT

[2026] SAC (Civ) 10
GRE-F110-22

Sheriff Principal Murphy KC

OPINION OF THE COURT

delivered by SHERIFF PRINCIPAL MURPHY KC

in appeal by

BWM

Pursuer and Appellant

against

LW

Defender and Respondent

Pursuer and Appellant: Party
Defender and Respondent: Sheridan; Rutherford & Sheridan Solicitors

8 December 2025

[1] Parties were formerly in a relationship and have two children together: LMM, born 13 May 2020 and BBM, born 15 April 2021. It is not clear when the relationship ended but it was certainly over by October 2021 and the children continued to reside with the defender and respondent ("the respondent"). She refused to allow the pursuer and appellant ("the appellant") to have contact with the children after the separation. On 11 August 2022 the appellant raised an action at Greenock Sheriff Court seeking residential contact which was defended by the respondent who sought interdict and interim interdict against removal of the children from her care and interdict and interim interdict against molestation of her by

the appellant, with power of arrest attached. Following various procedural steps, on 12 September 2024 the sheriff at Greenock dismissed the appellant's action at a peremptory diet following repeated failures to appear or be represented on his part. Decree in respect of the respondent's counterclaims was granted by a different sheriff at Greenock on 10 December 2024. Appeal has been taken against that decision on the grounds that:

- the court had imposed unattainable conditions on the appellant;
- the court had repeatedly refused critical motions made by the appellant;
- the court had ignored evidence of misconduct which the appellant had sought to bring;
- the sheriff had repeatedly exhibited bias towards the appellant which had prevented his receiving a fair hearing under Article 6 of the European Convention on Human Rights and Fundamental Freedoms ("ECHR");
- the appellant had been denied effective legal representation;
- the appellant had been subject to co-ordinated harassment by local authorities and other bodies, consistently around the time of various court hearings in an attempt to destabilise him at such times;
- Case-Based Review scheme ("CBR") had been misused in the appellant's case, which exacerbated his health issues and isolated him from support services;
- systemic failures in the proceedings had breached core ECHR protections under Article 6 (the right to a fair trial), Article 8 (the right to private and family life) and Article 14 (the prohibition against discrimination); the Children (Scotland) Act 1995 had been contravened, as had Article 9 of the United Nations Convention on the Rights of the Child ("UNCRC") which safeguarded a child's right to maintain a relationship with both parents.

The court eventually agreed, on the appellant's motion, to conduct the appeal by way of written submissions, in terms of Chapter 8(2)(b) of the Sheriff Appeal Court Rules.

Submissions for the appellant

[2] The appellant's access to justice was restricted by the court's instruction to secure a shorthand writer for the proof. The court dismissed without proper consideration the appellant's motions for interim contact, appointment of a commissioner to safeguard evidence, and requests for reasonable accommodation on account of the appellant's health conditions. Evidence of misconduct on the part of the social workers in the case was dismissed without enquiry. The sheriff displayed hostility and bias by silencing the appellant during hearings, disregarding his procedural objections and issuing decisions favourable to the respondent without fair evaluation, conduct which denied his right to a fair hearing under Article 6 of ECHR. The appellant had been denied effective legal representation because solicitors had refused to accept his explicit instructions and requests to have counsel assigned to represent him were ignored. The appellant had been harassed by housing associations and other authorities who had threatened to evict him and had neglected essential housing repairs and capped gas supplies, actions which coincided with critical court dates, which suggested that deliberate efforts were being made to destabilise the appellant during legal proceedings. The appellant had been denied access to healthcare which had exacerbated his conditions and isolated him from essential support services. These systemic failures had breached the human rights of the appellant and of his children and had inflicted severe emotional and psychological harm on each of them. The result was that his children had been deprived of a meaningful relationship with their father, resulting

in distress and emotional harm for them and a deterioration in his physical and mental health.

Submissions for the respondent

[3] The sheriff was justified in granting a residence order in favour of the respondent who has been the primary carer for both children throughout their lives. The appellant has had limited involvement with his children. The appellant's craves were dismissed on 12 September 2024 because there was no appearance by him or on his behalf. Chapter 33.37(3) of the Ordinary Cause Rules gives the sheriff a discretion to dismiss a family action in such circumstances. The court has to be satisfied that any order made was in the best interests of the children according to the welfare principle contained within section 11(7) of the Children (Scotland) Act 1995. The sheriff's note of 19 February 2025 made it clear that he had given proper consideration to the welfare principle. The appellant refers to various matters which are not accepted by the respondent but fails to focus on the basis of the appeal, which is that the sheriff granted the residence order unjustly without holding a proof. The respondent lodged a minute for decree on 8 November 2024 which was supported by affidavit evidence and a hearing was assigned for 10 December 2024 at which decree was granted. As the appellant's craves had been dismissed on 12 September 2024, the appellant's submission that proof should have been assigned on 10 December 2024 is incompetent.

Decision

[4] What is under appeal in this matter is the sheriff's interlocutor of 10 December 2024, to grant a residence order in the respondent's favour without a proof hearing taking place.

The appellant's position is not clearly stated but it seems that the appeal is intended to challenge the dismissal of the appellant's case prior to that. The procedural history of the case must be understood at the outset. The appellant raised the cause in August 2022, seeking residential contact with the children every second weekend, with non-residential contact for part of the Saturday on each intervening weekend, and residential contact during the school holiday periods at Christmas, Easter and the summer. At that time he was legally represented but his agents had withdrawn from acting on or about 20 January 2023 and a notice of intention to defend was allowed to be received late, without opposition, on 27 January 2023 and a timetable was fixed. The defences, which were lodged on 16 February 2023, contained craves for interdict as outlined in para [1] above. From this point on the appellant appeared as a party litigant. An open record was lodged in incorrect form on 7 August 2023 and a corrected version on 14 August 2023. On 24 August 2023 the sheriff assigned a proof for 31 October 2023 and fixed a case management hearing and a pre-proof hearing in advance of proof. It was this interlocutor which appointed the appellant to obtain a shorthand writer for the proof. On 14 September 2023 the appellant was allowed to amend the record substantially by way of an unopposed motion. By this time the appellant was represented by a different firm of solicitors from those who had appeared for him initially. On 19 October 2023 the sheriff allowed the record to be amended on the appellant's unopposed motion, discharged the diet of proof previously assigned and assigned a new diet of proof on 12 December 2023. At the same hearing the sheriff granted motions made on the appellant's behalf for specification of documents and diligence for the recovery of social work department documents relating to the appellant and the children. At a pre-proof hearing on 23 November 2023 the sheriff granted the respondent's opposed motion to discharge the proof hearing set for 12 December 2023 on account of outstanding

preparation required by both parties and on 21 December 2023 at a procedural hearing a third diet of proof was assigned for 16 April 2024. The appellant's agents subsequently withdrew and a peremptory diet was assigned for 25 January 2024 at which the appellant represented himself and the matter was continued until 22 February 2024 because the appellant had lodged an appeal against the interlocutor dated 21 December 2023 with the Sheriff Appeal Court. On 22 February 2024 the sheriff fixed a pre-proof hearing and continued the peremptory diet until 7 March for the appellant to lodge a motion seeking his recusal. By that time the respondent's agent had withdrawn and the matter was continued until the assigned pre-proof hearing on 14 March 2024 on which date the existing proof diet was discharged; motions by the appellant for the sheriff at Greenock to recuse himself and for him to appoint a solicitor to represent the appellant in the proceedings were subsequently refused. The matter was then sisted by the court *ex proprio motu* on 25 April 2024 and a review hearing was set for 18 July 2024. The appellant was personally present at the hearing on 25 April 2024. However, he failed to appear or be represented at the hearing on 18 July 2024 so a peremptory diet was fixed for 22 August 2024. On being advised in an email from the sheriff clerk, that the court would require a "soul and conscience" certificate in the event of his failing to appear on health grounds, the appellant sent a long message to the court in which he claimed that he was unable to obtain such a certificate because he was subject, for false reasons in his view, to the Care-Based Risk scheme ("CBR") which was designed to manage patients perceived to be aggressive or difficult, and so would be unable to obtain a soul and conscience certificate timeously. He also indicated that he did not wish to attend his GP because of the risk of his being arrested there on account of "wrongfully issued" arrest warrants which were apparently outstanding against him. The sheriff continued the matter to a further peremptory diet on 12 September 2024 for the appellant to

be personally present and for him to obtain a soul and conscience certificate. The appellant lodged a motion seeking to be excused personal attendance at that diet on health grounds, once again without providing any supporting medical vouching, which was opposed. When he failed to appear at the hearing on 12 September 2024 the sheriff refused his motion. The sheriff granted a motion from the respondent to dismiss the appellant's case. He allowed the respondent's craves to proceed as undefended by way of affidavit evidence. The appellant sought to appeal the interlocutor of 12 September to this court but his application was refused because it was not a final decision as the expenses of the action had not been dealt with; therefore it was not appealable without leave of the sheriff. On 10 December 2024 the appellant attended court in Greenock where the sheriff considered the affidavit evidence and granted to the respondent the residence order and orders for interdict which she had craved.

[5] Chapter 33.37 of the Ordinary Cause Rules deals with decree by default in the context of family actions. It contains the following provisions:

> "33.37-(1) In a family action in which the defender has lodged a notice of intention to defend, where a party fails-
>
> (a) to lodge, or intimate the lodging of, any production or part of process,
> (b) to implement an order of the sheriff within a specified period,
> (c) to appear of be represented at any diet, or
> (d) otherwise to comply with any requirement imposed upon that party by these Rules;
>
> That party shall be in default.
>
> (2) Where a party is in default under paragraph (1), the sheriff may-
> …
> (c) grant decree of absolvitor; or
> (d) dismiss the family action or any claim made or order sought; or
> (da) make such other order as he thinks fit to secure the expeditious progress of the cause;"

[6] The appellant was repeatedly in default. Having been personally present on 25 April 2024 when the cause was sisted and a review hearing was fixed for 18 July 2024, he failed to

appear or be represented at the said review hearing. Subsequently he failed to appear or be represented at the peremptory diet on 22 August, of which he had been given notice. He again failed to appear or be represented at the second peremptory diet on 18 September 2024 of which he had been given notice. His claims of ill health were not supported by any medical certification or other vouching, although he was repeatedly advised by the court that such support was required. The reasons for failing to obtain and provide a soul and conscience certificate contained within his motion of 11 September 2024 (which the sheriff alludes to without going into detail) were unacceptable. Tellingly, he admitted that he had been reluctant to attend his designated GP because he was aware that there were outstanding criminal warrants for his arrest in existence at the time. He was given repeated opportunities by the court to correct the position which he had repeatedly been advised was likely to place him in default. He failed to take advantage of any of those opportunities. In the circumstances which pertained on 18 September 2024 the sheriff was entitled to refuse the appellant's motion, for which he had not appeared to present any argument, and to dismiss the appellant's case in terms of rule 33.37(2)(d). The sheriff was also entitled to allow the respondent's craves to proceed as undefended by way of affidavit evidence, in terms of rule 33.37(2)(da). The hearing of 10 December 2024 was an undefended proof conducted by way of affidavit evidence. The appellant's own behaviour led directly to those outcomes. It is incorrect for him to say that the sheriff granted decree to the respondent without proof taking place. His own craves were not considered because they had been struck out following his earlier default. It is clear from his note to this court dated 19 February 2025 that the sheriff did give proper consideration both to the affidavit evidence before him and to the best interests of the children when he considered the respondent's case.

[7] The appellant's submissions do not address the real issues in this appeal. He has provided no adequate explanation for his repeated failures to appear or to obtain the requested medical certificate. Instead, he has reiterated a lengthy list of grievances against various individuals and public authorities which he claims stood in his way while he was trying to pursue this action, much of which was previously submitted in writing when he was seeking to be excused attendance at the hearings in the summer of 2024. Some of these relate to things which are impossible to achieve: for example, one of his complaints, with regard to equality of arms, is that he is unrepresented, and the court has failed to appoint an agent or counsel to act for him; but the court has no power to do so in a case such as the present one. In similar vein, the court has no power in the present action to reconsider the merits of any of the criminal cases brought against him or those behind the actions of his doctors, landlords or the local authority. The dismissal of his appeal was occasioned by his failure to appear and had nothing to do with any failure to appoint a shorthand writer, the expense for which falls upon both parties in any event. Far from exhibiting bias toward the appellant, the court repeatedly allowed him the opportunity to present his case by offering further peremptory diets following his repeated failures to appear. At earlier stages in the proceedings, his motion to discharge the first diet of proof had been granted, as had that for specification to obtain social work department records. It is not unusual for the court to decline to appoint a commissioner when such a motion is granted to save time and expense and that is a matter for the discretion of the sheriff. There are no averments on record that his children have suffered severe emotional or psychological harm or distress. The appellant has to accept responsibility for failing to comply with the orders of court which led to the sheriff's dismissal of his action.

[8] The rules of court are designed to ensure fairness to all parties. The appellant is responsible for the fact that his case did not proceed to proof: that cannot constitute a breach of his human rights (or those of his children) by the court, which applied a well-established rule in the usual way to ensure fairness and to proceed to a decision in order to provide certainty for the respondent and the children.

[9] Accordingly this appeal is refused.

[10] I find no expenses due to or by either party in relation to the appeal proceedings.